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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			RUMP, RICHARD M	
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1                   RECORD OF ORAL HEARING

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3                   UNITED STATES PATENT AND TRADEMARK OFFICE

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6                   BEFORE THE BOARD OF PATENT APPEALS  
7                   AND INTERFERENCES

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10                  *Ex parte* OLEG STENZEL, STEFAN UHRLANDT,  
11                  HANS-DETLEF LUGINSLAND, and ANDRE WEHMEIER

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14                  Appeal No. 2010-000219  
15                  Application No. 10/523,029  
16                  Technology Center 1700

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19                  Oral Hearing Held: June 10, 2010

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22                  Before CHARLES F. WARREN, CATHERINE Q. TIMM, and  
23                  STEPHEN WALSH, *Administrative Patent Judges.*

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25                  APPEARANCES:

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28                  ON BEHALF OF THE APPELLANT:

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31                  HARRIS A. PITLICK, ESQUIRE  
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1       The above-entitled matter came on for hearing on Thursday, June 10,  
2 2010, commencing at 2:25 p.m., at the U.S. Patent and Trademark Office,  
3 600 Dulany Street, Alexandria, Virginia, before Christine L. Loeser, Notary  
4 Public.

5 JUDGE WARREN: Good afternoon, Mr. Pitlick.

6 MR. PITLICK: Good afternoon, Judge Warren.

7 JUDGE WARREN: In this case, as you know, sir, you have 20 minutes.  
8 You may proceed when ready.

9 MR. PITLICK: Okay. Thank you. Before I get into the meat of the  
10 argument, I want to point out in that in our Appeal Brief, we pointed out in  
11 terms of related appeals, we didn't think there were any that would actually  
12 have a direct effect, would be directly affected by this particular case but we  
13 thought it might have a bearing on the Board's decision.

14 I don't know whether the Board has been updated on that particular appeal.

15 JUDGE TIMM: We have.

16 MR. PITLICK: You have, okay. So you don't need to see the decision. But  
17 at any rate --

18 JUDGE TIMM: That's the decision of April 12th, 2010?

19 MR. PITLICK: Yes.

20 JUDGE TIMM: On 2010-000024?

21 MR. PITLICK: Yes.

22 JUDGE TIMM: We have that.

23 MR. PITLICK: Again, before I get into the meat of the argument here, you  
24 can at least see that the claims were similar. There was a difference in the  
25 sears number but there was an overlap in the other features of the claim and  
26 the rejection over Uhrlant, et al., was the same.

1 Let's focus on this particular case. We have one rejection, one of  
2 obviousness over Uhrlant, et al. As we have argued, this really is a selection  
3 invention.

4 We discovered that in a narrower or at least partially narrower and  
5 somewhat overlapping version of the various parameters of Uhrlant, et al.,  
6 that when you use these particular silicas, precipitated silicas, to fill what we  
7 are generically calling commercial tires, trucks, motorbikes, high  
8 performance automobiles, that when you use a precipitated silica with these  
9 parameters, you get improved properties, particularly something that we  
10 refer to as tear resistance, T-E-A-R, which is measured by a Die-C,  
11 D-I-E-capital-C, test and we have comparative data in two Declarations  
12 under 37 C.F.R. 1.132 of Dr. Wayne Meyer which basically shows that the  
13 tear resistance is higher compared to what Dr. Meyer finds and it is a  
14 question of fact. It's the closest prior art of Uhrlant which is example 4.  
15 Quite frankly, the Examiner has pretty much not treated the showing on the  
16 merits other than saying that one of the examples in the Second Declaration  
17 was, I'm paraphrasing, I think she said close to or not that much higher than  
18 example 4, but I think we have shown a trend that, at least operating within  
19 the parameters of our claims, you get a superior tear strength which could  
20 not have been predicted by Uhrlant, et al.

21 That is the gist of the argument. We have pretty much incorporated by  
22 reference everything in the Appeal Brief and Reply Brief. If you have any  
23 questions, I will do my best to answer them.

24 JUDGE TIMM: No questions.

25 JUDGE WALSH: No questions.

26 JUDGE WARREN: No questions. Thank you very much, counselor.

Appeal 2010-000219  
Application 10/523,029

1       Whereupon, the proceedings, at 2:28 p.m., were concluded.

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